A Victory for Physician-Assisted Suicide

by A.A. Smyser

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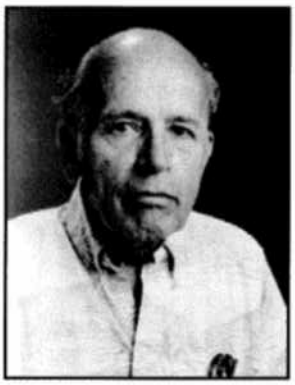

Bud Smyser

Editor's Note:
These two issues of Bud Smyser's "Hawaii World" Star-Bulletin articles continue our series on Death with Dignity, reprinted with the permission of the Honolulu Star-Bulletin and the author. The jury is still out on the final decision. Look for the Special Issue on Death with Dignity in December.

It has not been fully grasped, but in Hawaii and eight other Western states it has been legal since March 6 to assist a suicide. It probably will remain so at least until that day's 8-3 ruling of the 9th U.S. Circuit Court of Appeals is appealed to the U.S. Supreme Court.

Washington state, whose law against assisted suicide was overturned, has until early June to file an appeal. The current legality of assisting a suicide is confirmed by Hawaii's senior judge on the appeals court, Herbert S. Choy. He was not on the panel that heard the Washington case but he is one of 13 senior (or retired) judges who still help the 25 active judges with their heavy caseload.

Even though a window of opportunity is open to legally assist suicides in the Western U.S. I know of no evidence that doctors, patients or even right-to-die organizations are rushing through it.

There are at least three reasons why:

- Everyone is cautious, doctors included. The window could close again if Washington appeals, as expected, and gets a stay order.
- Rules and regulations are not in place.
- Without a doctor's help, right-to-die candidates and their friends will have a hard time laying their hands on the medications needed to do the job.

Barbiturates are the drugs of choice, I was told by Dr Richard MacDonald, who is the national medical adviser for Hemlock U.S.A. Plenty of doctors know how to use them. He says: (1) start with an anti-nausea medication, (2) take the barbiturates mixed in something like orange juice to get rid of the bad taste, (3) drink something to speed up absorption in the blood stream. Booze will do.

Trouble is a lot of pharmacies don't even stock the barbiturates any more because doctors hardly ever prescribe them, MacDonald says. Other effective and non-toxic sedatives have taken their place.

You might get them in Mexico. Even there you would need a doctor's prescription. In some cases this could be fast and cheap but there's no general rule.

And going ahead on a do-it-yourself basis without a doctor standing by could be botched, lead to emergency room care and even prolonged disablement.

The plastic bag method of taking a sleeping pill, then pulling a plastic bag over your head and fastening it tight around your neck with a rubber band also has had a few grotesque failures. It is unattractive for survivors even when it works.

The very clear social goal of all right-to-die advocates should be to have the process safe and even pleasant when a case justifies such help—and is a confirmed and reconfirmed conscious choice of the subject.

Derek Humphry, author of "Final Exit," which prescribes dosages, has described cases of family and friends gathering around for "departures," or at least just before the final act, and going away with very good feelings. I'd find it comforting to check out the way myself at the right time.

The 11 member court decision includes over 150 pages of the majority judgment plus dissents. The majority ruling written by Judge Stephen Reinhardt is said to be carefully crafted to stand by itself as a strong, persuasive presentation to the U.S. Supreme Court.

The high court in 1990 upheld a constitutional right to die in a complicated Missouri case that left controls to the states. It hasn't yet ruled, however, on the right to assist a death.

Newly available and commended by Hemlock U.S.A. sources is "A Model State Act to Authorize and Regulate Physician-Assisted Suicide." It was developed by a panel of nine doctors, lawyers and scholars and published in the Harvard Journal on Legislation, Volume 33, issued in January. More on it in a future column.

A Model Law on Physician-Assisted Suicide

by A.A. Smyser

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On a very timely basis, the Harvard University Law School's Journal on Legislation has come up with "A Model State Act to Authorize and Regulate Physician-Assisted Suicide."

It is timely because, by a U.S. appeals court decision, a window of opportunity for such deaths is open right now in Hawaii and eight other Western states. The U.S. Supreme Court conceivably could extend the opportunity nationally as early as next year by upholding the Western region decision.

The model act in many respects matches a law approved by Oregon voters in a 1994 referendum but meets several of the objections to that act raised by a federal district judge in Oregon.

The nine authors of the proposed law—two years in the drafting—are from the fields of law, medicine, philosophy and economics. Their spokesperson is Charles H. Baron, professor of law at Boston College. Their product is detailed in Volume 33,

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A Model Law on Physician-Assisted Suicide

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issued in January, of the Harvard Journal on Legislation.

They say they chose a long-form law, setting forth detailed procedures, instead of a short form, primarily protecting physicians from liability if the cases met certain criteria.

The long form, they acknowledge, is intrusive to the patient's privacy. It requires a request for assistance made on at least two separate occasions at least 14 days apart with no contrary expression in between.

It requires one verification in writing by another "responsible physician" and another by a licensed psychiatrist, clinical psychologist or psychiatric social worker. It requires that the patient be fully informed of other options such as hospice care and pain control.

All these records are to be filed with an appropriate state officer but considered confidential. They will not identify the patient except for a coded reference.

The argument for this intrusiveness is that it protects both physician and patients and guarantees against going down the "slippery slope" to casual suicide, even murder, that foes of assisted suicide say will be abused.

A distinction is made on "assisted suicide" in which a physician prescribes a potion and—preferably, say the authors—attends the death while the patient self-administers the potion. The model law does not approve the alternative of "euthanasia," in which the physician actively administers death.

All hospitals and health personnel who choose to abstain for reasons of conscience are protected, as are the people who help administer death so long as they meet the requirements of the law. Under the proposed law, life insurance could not be voided.

The privilege of physician-assisted death is limited to person 18 or older suffering "intractable and unbearable illness." This is defined as "a bodily disorder (1) that cannot be cured or successfully palliated, and (2) that causes such severe suffering that a patient prefers death."

This definition split the commission, with the minority favoring limiting assisted suicide to the terminally ill. The broader definition, the report says, could cover cases "such as AIDS, advanced emphysema, some forms of cancer, amyotrophic lateral sclerosis, multiple sclerosis and many other debilitating conditions."

One of Hawaii's leading thinkers on medical ethics is Kenneth Kipnis, professor of philosophy at the University of Hawaii. He says we must decide soon how to handle assisted suicide, yet are woefully unprepared. The Harvard proposal could provide a starting point for a Hawaii blue ribbon committee to develop a recommendation for the 1997 Legislature.

Editor's Note:
See "Some Ethical Principles for Adult Critical Care" by Kenneth Kipnis PhD and Anita Gerrard, MD. *Haw Med J.* 1995, 54142-484.

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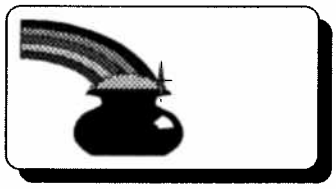

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